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AUTHOR	Howell, Penny
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ABSTRACT

Collective bargaining to establish salaries, benefits, and working conditions for public school employees is now an institutionalized fact of life in California. Virtually all public school districts participate in collective bargaining. School districts can implement most new laws--from class-size reduction to teacher evaluation--only after they have bargained the impact. This can be significant in a district's labor-management relationships. Further, although districts bargain independently, control of revenues for public schools is centralized in Sacramento--leaving districts with limited flexibility to satisfy competing requests for resources. This report explains how school-district collective bargaining works in California, how conflicts are resolved, and who the players are. (DFR)

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REPORT

March 1999

Collective Bargaining

Explaining California's System

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Clarifying Complex Education Issues

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REPORT
March 1999

Collective Bargaining

Explaining California's System

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Clarifying Complex Education Issues

Collective bargaining is a procedure, regulated by law, for negotiating an employment contract between a school district and representatives of employees. All California school districts bargain with their unions in a process that can range from adversarial to cooperative.

Collective bargaining to establish salaries, benefits, and working conditions for public school employees is now an institutionalized fact of life in California — one that is simultaneously helpful and unpredictable, familiar and not well understood, straightforward and complex. Virtually all public school districts participate in collective bargaining.

The impact of collective bargaining since the authorizing legislation in 1975 has been pervasive: it plays a central role in each district's decision making process. It affects every aspect of a school's environment and budget and, on many occasions, educational policies and practices.

School districts can implement most new laws — from class size reduction to teacher evaluation — only after they have "bargained" the impact. This can be significant in a district's labor-management relations.

Further, although districts bargain independently, control of revenues for public schools is centralized in Sacramento — leaving districts with limited flexibility to satisfy competing requests for resources.

This report explains how school district collective bargaining works in California, how conflicts are resolved, and who the players are.

How it works

At least once every three years, the employer (the school board) and the exclusive bargaining agent of the employees (the union) meet to negotiate the terms for working in the district. Collective bargaining is used to set salaries and benefits, hours, the calendar, and most aspects of the working conditions for the represented employees, as well as to solve unanticipated problems and address new issues during the period of the contract.

Choosing a union

The process for establishing collective bargaining was initially spelled out in Senate Bill 160, the Educational Employment Relations Act of 1975 authored by Senator Al Rodda (see box on page 4).

Employees who do similar work may create a **bargaining unit**. Employees who hold a teaching credential and a non-administrative teaching position (including part-time) comprise the **certificated** staff. In some districts, other employees, for example nurses and librarians, are part of the certificated bargaining unit. Credentialed management and supervisory employees are not included in the teachers' unit, although supervisors such as principals may form their own unit.

The rest of the employees comprise the **classified** staff. For the purposes of bargaining, they are often subdivided into groups, such as clerical workers, custodians, or classroom aides.

Starting negotiations

Once the bargaining units are determined, each unit may **elect a union as its exclusive representative** by majority vote. An election need not be held if only one union petitions to represent a unit; in that case, the district grants **voluntary recognition**. When exclusive representatives have been identified, **bilateral good faith** negotiations must begin. The law does not require that the negotiations result in a contract (see Figure 1).

The actual negotiators vary according to the size of the district and the nature of its personnel relationships. In small districts the superintendent (or a designee representing the school board) may negotiate directly with officers or representatives of the union. Larger districts may assign the responsibility to a team of administrators. Unions usually select their bargaining team from within the membership.

Either party may bring in an outside professional negotiator to bargain according to instructions or guidelines set by the school board or the union. For example, the statewide unions, such as the California Teachers Association or California School Employees Association, often offer assistance to local units, and some school boards hire legal or other consultants.

Because negotiations are mandated once a bargaining unit has been selected, the state reimburses the school district for the direct expenses (except for the superintendent's time) that it incurs in the bargaining process, including the cost of substitutes for up to five teachers who are part of the bargaining team. Unions pay for their costs out of the dues collected from their members.

The negotiations schedule is jointly planned, and the process can take months. Negotiations usually result in a contract signed by and binding on both parties. It applies to all employees in the bargaining unit, whether or not all of them have joined the union.

The original intent was for negotiations to be completed before a school district approves its final budget. In practice, contracts often are delayed because the state's budget is rarely adopted before July 1. Serious negotiations require knowledge of how much money the district will have available for salary increases, benefits, and other costs.

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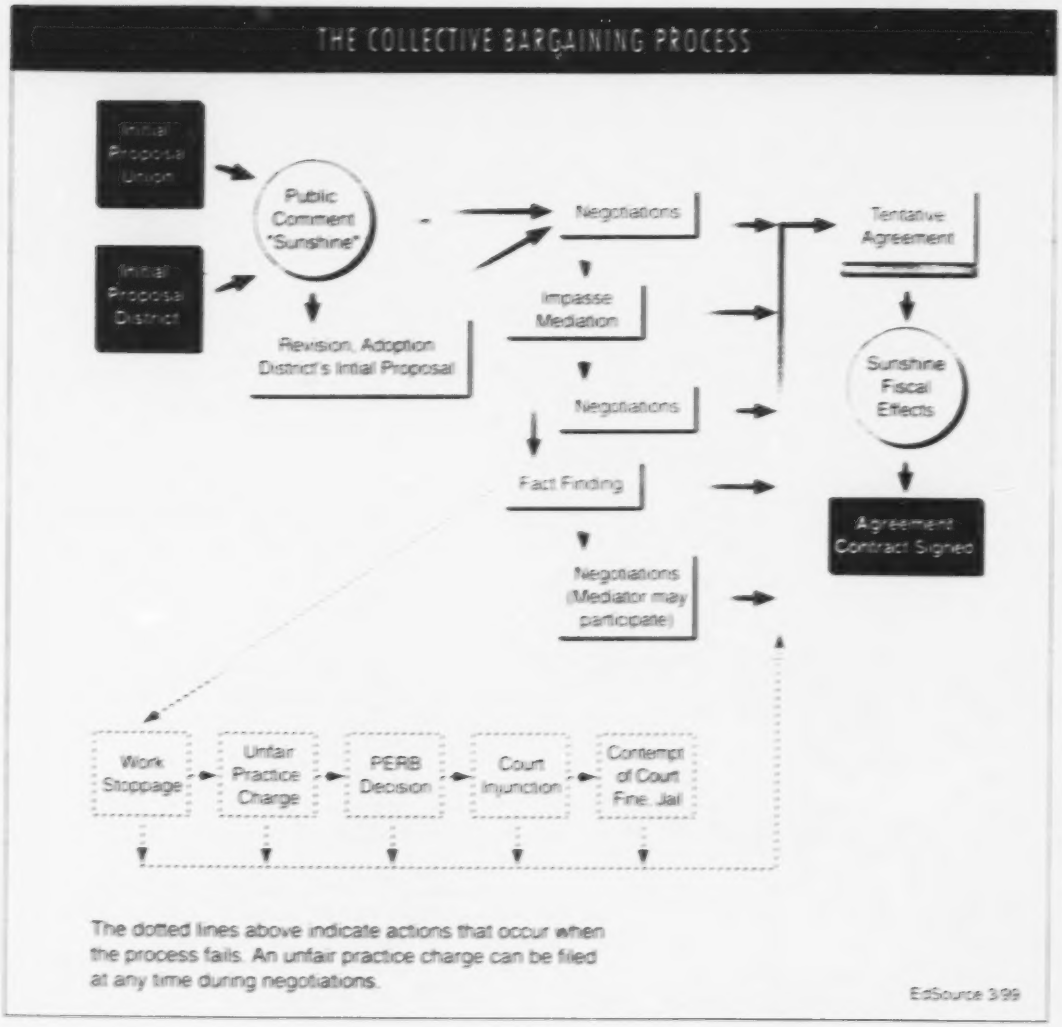
Figure 1



The term of a contract ranges from one to a maximum of three years. When negotiations stretch out for several months, the contract can be retroactive to an earlier date. If agreed to in the original contract, specified items may be renegotiated ("reopened") in the second or third year of a multi-year contract by either party. Reopeners can be limited to, for example, salaries, benefits, and one other topic, or they can include a longer list of items.

The details of the contract

The law defines "scope," a broad range of issues and subjects that either party may introduce for negotiation. Scope is a crucial, dynamic area, one that was frequently litigated when collective bargaining was new to public schools.

Originally, the Rodda Act limited scope to "matters relating to wages, hours of employment, and other terms and conditions of employment." The latter were defined as certain health and welfare benefits; safety conditions; leave, transfer, and reassignment policies; evaluation, layoff, and grievance procedures; and class size.

Through the appeals process, litigation, and new laws, scope now covers many more topics. Typical examples of the contents of a contract are in Figure 2.

Among the myriad possibilities, the subjects for bargaining are categorized as mandatory, permissive, or prohibited. Mandatory items must be negotiated, and failure of a school board to do so is evidence of bad faith. Permissive items may be negotiated if both sides agree, but there is no legal duty to do so.

Non-negotiable items are preempted by the Education Code and are therefore beyond the scope of collective bargaining. Neither party may bring those matters to the bargaining table. A crucial example of a non-negotiable item is the portion of the Education Code that describes due process — tenure — for permanent teachers. Dismissal procedures for all employees are spelled out in California's Education and Government Codes. A contract can reiterate a portion of one of these Codes, but the details are not subject to bargaining.

The Rodda Act also indicates additional subjects on which the two parties may decide to "consult." For example, certificated employees may be consulted about the definition of educational objectives, content of courses and curriculum, and selection of textbooks. The school board may expand the topics for consultation. The items may, but do not have to, be included in the contract.

The school board can — and does — retain management rights. Examples are setting broad performance targets for the district and developing budget procedures that control the number of employees. How the district does business can be separated from working conditions, although lines sometimes blur.

The process of negotiating

California's system of collective bargaining for public schools was originally patterned after the confrontational private-sector model, and relationships were rocky in the beginning. As bargaining representatives were elected (often a contentious decision) and districts settled into the new process, the adversarial nature of the process was tempered. In the late 1980s a more cooperative method for reaching agreement about the critical aspects of employer-employee relationships, "interest-based" bargaining, began to gain the support of many unions and school districts.

In the traditional bargaining system, each party formulates a list of demands before beginning to negotiate. These positions are frequently openers for conversations in which both sides expect considerable give-and-take. The central issue, salaries, is frequently the area with the most contentious proposals — employees demanding a 10% raise, for example, with the employer asserting that the projected budget would allow only 1%. When the two sides are far apart, the negotiations can take many months to complete. During that time, the provisions of the expired contract remain in force.

In contrast, interest-based bargaining is exactly what the words say — negotiations based on interests, not necessarily mutual, rather than on opposing positions.

Figure 2

CONTENTS OF A TYPICAL TEACHERS' CONTRACT

Compensation:	cost-of-living adjustment, salary schedule, pay for specific duties (department chair, coach), minimum teacher salaries, expenses, travel reimbursement, tuition reimbursement, mentor teacher selection process
Benefits:	health and welfare premiums, specific plans offered, retiree benefits
Hours:	length of work day, work year, student year, calendar (holidays, vacations), minimum days, preparation periods, lunch
Leaves:	bereavement, pregnancy, child rearing, religious, sick leave, disability, sabbatical, personal need/necessity, jury duty, military, industrial accident/illness, catastrophic illness
Retirement:	early retirement, benefits
Nondiscrimination:	nondiscrimination
Job assignment:	assignment, promotion, transfer, reassignment
Class size & case loads:	pupils per teacher, students per counselor, number of teaching periods, instructional aides
Safety conditions:	criteria
Evaluation:	procedures and remediation
Grievance:	procedures, appeal process, mediation, and arbitration
Discipline:	procedures and criteria
Layoff & reemployment:	procedures
Organizational security:	payroll deduction of union dues ("agency fee"), maintenance of membership, fair share fees, union rights
Work stoppage:	"no-strikes" clause
Contract:	duration, reopeners
Savings clause:	contract in effect if portion invalidated by court, Legislature
Management rights:	authority "to the full extent of the law"
Consultation:	topics, procedures

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Typically the participants begin with three days of joint training. They learn how to identify mutual needs, talk with each other, establish open communication, build labor-management relationships, work through differences, resolve conflicts, and reach closure.

THE HISTORY OF COLLECTIVE BARGAINING IN CALIFORNIA SCHOOLS

Until 1975, employees in public schools worked under annual, individually signed employment contracts. Their ties with professional associations were loose or nonexistent. Improvements in wages and working conditions were idiosyncratic, depending on the circumstances and inclinations of each school district, which at the time could set its property tax rate to cover expected costs.

Growing interest in the success of collective bargaining in the private sector led the California Legislature to pass the Winton Act in 1965. It required districts and teachers to "meet and confer" on subjects of mutual interest. Ultimate authority, however, rested with the local school board.

Seeking a stronger voice in decisions, the statewide teacher unions lobbied to establish formal collective bargaining. After several failed attempts, Senate Bill 160 (Rodda), the Educational Employment Relations Act, was finally signed in 1975. The provisions, which originally applied to kindergarten through community college employees, were extended in separate but related laws to most state workers in 1978 and to higher education employees in 1979. By 1997-98 over 675,000 pre-kindergarten through college employees were covered by the Act.

The Rodda Act, which is part of the California Government Code, states that its purpose is "to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California." Teachers in particular are granted a "voice in the formulation of educational policy." The law establishes the right of public school employees to choose organizations that will represent them in their employment dealings with school districts. In short, it gives employees the right to unionize, and it requires school districts to recognize the duly elected unions as the sole bargaining agents and to negotiate only with them.

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Responses to this process range from dissatisfaction to great enthusiasm, although not all problems are easily solved. Interest-based bargaining works best in an atmosphere of trust and reliable information. It can also be used to address issues of joint interest that are not connected to the contract. The key organization supporting collaborative bargaining is CFIER, the California Foundation for Improvement of Employer-Employee Relations (see box on page 5). The California Teachers Association has an extensive training program in interest-based bargaining.

Not all negotiations fit neatly into either of these two models. A number of California districts have gone beyond collaborative bargaining to develop atypical agreements. These contracts are generally referred to as "innovative bargaining agreements." They could cover difficult topics not usually included in the scope of negotiations, such as teacher quality and student achievement.

Internal and external pressures

In each school district, the "climate" — the historical relationships, number and types of disputes, and role of the community — greatly affects the nature of the negotiations and the appearance of the final agreement. Districts can face working relationships that range from harmonious to acrimonious. Even while playing by the same rules or receiving identical instructions from the statewide organization, school boards and unions make their own decisions and create their unique local contracts.

The climate and the outcome can also be greatly affected by legislative and gubernatorial decisions. The existing Education Code and new legislation can complicate or limit the options available to school boards and unions.

Further, funding for public education is centralized in Sacramento. In years of minimal increases, the amount of money available to the district can leave little room for negotiation no matter how favorable the intentions. Sometimes trade-offs with an educational impact have to be made, such as shortening teachers' work day (e.g., eliminating one period) in lieu of a salary increase or expanding the pupil-teacher ratio in exchange for higher wages. Rising premiums for health care or other benefits cause additional pressure on the budget. Setting priorities for expenditure of limited funds can lead to frustration, and sometimes bitterness, as both parties struggle to achieve an agreement perceived to be fair to employees and to the educational needs of students.

An appointed board administers the law and resolves conflicts

Disagreements can arise at any time, even with interest-based bargaining. The original collective bargaining law and its amendments provide for a state-level adjudicating body, the Public Employment Relations Board (PERB). The law spells out the steps that must be taken to solve problems.

PERB

Collective bargaining legislation is administered by PERB. The salaried, five-member Board is appointed by the governor, subject to Senate approval, for five-year terms. Staff are located in Sacramento and various field offices.

PERB oversees the bargaining unit's selection of a union; handles questions in disputes, such as charges of unfair labor practices; appoints fact finders; and maintains a public file with copies of all signed contracts. A contract with the State Mediation and Conciliation Service provides mediators when needed.

The Legislature has deliberately assigned responsibility for almost all collective bargaining decisions to PERB. Judicial review is limited: PERB rulings are final unless the evidence shows that court review is warranted.

Although PERB's function is interpretive, not legislative, it has become a quasi-judicial body that is a powerful force in the politics of education in California.

The process for handling disputes

The disputes that PERB handles are grouped into categories, and rules cover the procedures for resolution. These include:

- *unfair labor practice.* During the process of negotiating for a new or renewed contract, a charge of unfair labor practice for violating the law may be leveled by either party or by an individual employee. Examples are refusing to meet and negotiate in good faith; coercing or threatening reprisals against employees; or (rarely used these days) trying to influence the selection of a union.

  The resolution can involve several steps — review by a staff member of PERB to determine if an unfair practice may exist, an informal meeting with a neutral third party to attempt to mediate a resolution or narrow the issues, then a hearing before an Administrative Law Judge, and, upon appeal, a review by the PERB board itself (see Figure 3). PERB reported a "significant" increase in unfair labor practice charges in 1996-97 and 1997-98.

- *impasse/mediator/fact finding.* If negotiations break down completely, either party may file a request for PERB to declare that an impasse has been reached. A mediator may be assigned to assist in reaching a compromise. Failing resolution, the mediator may agree to send the dispute to fact finding, wherein each party appoints one panel member and PERB provides a chairperson. The recommended terms of settlement are advisory only, that is, neither the school board nor the union has to accept them. However, both the facts and the recommendations must be made public ten days after they are determined, and negotiations may resume at this point.

- *work-to-rule/strike.* Both parties, especially in confrontational bargaining, sometimes exert pressure tactics during the process. Employees who object to the status of negotiations may **work-to-rule**, that is, strictly follow the hours and other conditions in the existing contract. Examples are refusing to attend meetings or advise a student club outside of school hours.

  Employees can also stage a **sick-out** or have **informational picketing**. The employer can present its viewpoint to the press and the school community. Once formal impasse procedures have been exhausted, employees can call a work stoppage — a **strike**.

  Until the mid-eighties, strikes were neither explicitly permitted nor forbidden in California; PERB had jurisdiction to ask a court to issue an injunction to halt a strike. In May 1985, the California Supreme Court ruled that strikes by public employees are permitted unless public health or safety is threatened. Despite this authority, unions in California have been cautious in calling strikes.

Disputes outside of bargaining

Sometimes districts and unions have disagreements that are not a part of negotiations. A common example is a **grievance** over the "interpretation, application, or violation" of an existing contract.

CFIER SUPPORTS INTEREST-BASED BARGAINING

Spearheading the movement for collaborative labor relations is the California Foundation for Improvement of Employer-Employee Relations. Begun in 1987 as a project of PERB, the Public Employment Relations Board, CFIER gained the support of the education community, state government, and private foundations. In 1991 the California Legislature recommended that CFIER become an independent non-profit foundation.

The organization is committed to "building and maintaining effective labor-management relationships and partnerships." To accomplish this goal, CFIER promotes the collaborative "interest-based" approach for resolving conflicts and reaching consensus. Its activities include training programs in negotiations and problem solving, neutral facilitation services, skill-building workshops and conferences, consultation, research and development, and long-term support services.

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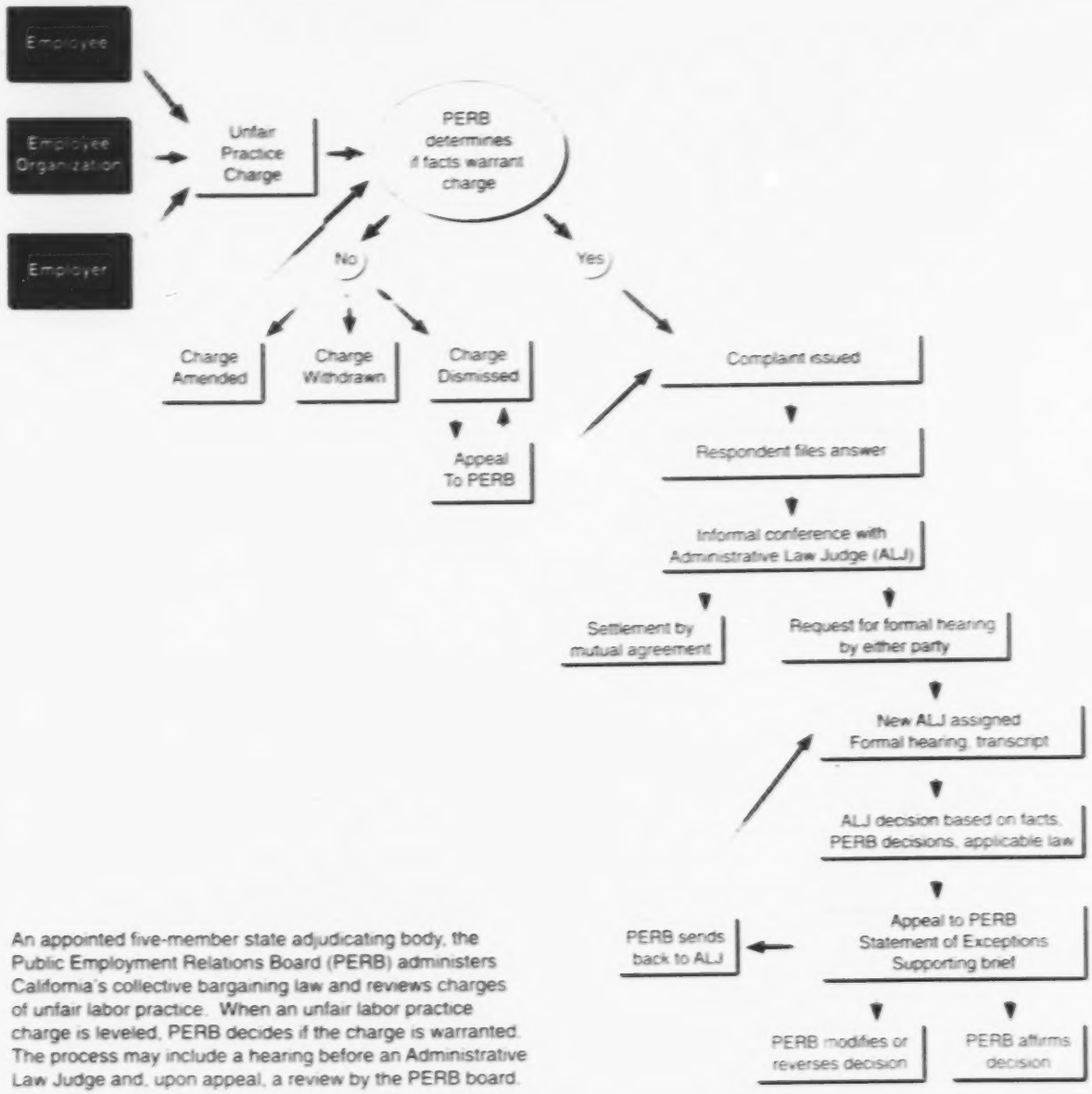
Figure 3

RESOLVING UNFAIR LABOR PRACTICE DISPUTES



An appointed five-member state adjudicating body, the Public Employment Relations Board (PERB) administers California's collective bargaining law and reviews charges of unfair labor practice. When an unfair labor practice charge is leveled, PERB decides if the charge is warranted. The process may include a hearing before an Administrative Law Judge and, upon appeal, a review by the PERB board.

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Grievance procedures, which can differ district to district, are the processes by which the terms of a contract are enforced. Most begin in a meeting with a supervisor in which employees describe the problem. In the absence of resolution, a written communication alleging a contract violation is then filed. Grievance mediation with an interest-based approach is one method now used by the State Mediation Service. An unsettled claim is reviewed by the superintendent or designee, and in some cases the next step is a final decision by the school board.

A frequent alternative is **arbitration** of the dispute by an outside party. If the contract specifies **binding** arbitration, the recommendation will be final. If not, it is advisory, which means the final review and decision are made by the school board.

Who are the players?

Unionism is very big business in California, with considerable power because of the substantial political contributions that unions make. In addition to providing advice and services to their local units, the major statewide unions take a strong interest in ballot measures and legislation that would affect their employees.

The **California Teachers Association** (CTA), an affiliate of the National Education Association (NEA), is the state's largest representative of education employees with over 280,000 members in 1999. The **California Federation of Teachers** (CFT), an affiliate of the American Federation of Teachers (AFT), represents 95,000 of the state's K-12 teachers, community college faculty, various K-12 and higher education classified employees, librarians and lecturers in the University of California system, and some private schools.

At least two districts have unusual local bargaining units. **United Teachers Los Angeles** (UTLA) represents over 35,000 teachers and support service personnel throughout Los Angeles Unified School District, the second largest in the nation. UTLA, which has its own full-time lobbyist in Sacramento, began as a blend of the local CTA and CFT bargaining units. **United Educators of San Francisco** is a coalition of teachers and classified staff who belong to CTA/NEA and CFT/AFT.

Classified (non-teaching) employees belong to several different unions. **California School Employees Association** (CSEA) represents just under 140,000 public employees statewide, many of them clerical workers. It is the largest independent classified employee union in the U.S.

Many maintenance and other similar employees are part of the **American Federation of State and Council Municipal Employees** (AFSCME), which has about 54,000 dues-paying members, or of the **Service Employees International Union** (SEIU).

With multiple unions in most districts, employee contracts — though negotiated separately — often have an impact upon each other. An example is the "me-too" agreement that has similar or identical clauses to other contracts. Even contracts of individual district administrators can be affected by other collective bargaining agreements.

Help and information for the employers, over a thousand school boards and county offices of education, comes from CSBA, the **California School Boards**

TYPICAL CONCERNS IN NEGOTIATIONS

Two issues connected to collective bargaining are of perennial interest and, often, confusion to interested parties and the public. The first is data. What are the facts about a school district's budget, its expected revenues, and its spending priorities or constraints? Is money hidden somewhere? What is the total compensation package (salaries and benefits) for various employee groups, how does it compare to neighboring districts, and why are they different? Which revenue sources are earmarked for particular purposes and not available for salary increases? The convoluted system for funding schools makes answers to these questions hard to get, yet money is at the heart of the negotiating process. Sometimes even the union and the school board start out with different sets of numbers, which is bewildering to the public.

The second issue is equally hard to nail down, that of clear communications. Because negotiating occurs in private, very few people outside the process know what is being said. In addition, evaluating the validity of either side's claims and demands is somewhere between difficult and impossible. This is particularly true when the scope of the bargaining includes many topics, not all of them directly related to money. One of the advantages of a non-confrontational approach to negotiations is the potential for educating the public about the goals and mutual interests of the employer and employees.

Because of these provisions and practices, the school community, sometimes including the affected employees, has little or no access to information about what is being discussed unless the bargaining parties agree to provide public communications about their progress.

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Association, and from ACSA, the **Association of California School Administrators**, both of which offer workshops, training, and publications to their members. Unlike the unions, however, these organizations are rarely directly involved in a local district's collective bargaining process.

The third player, a peripheral one even though some provisions of a contract can have a direct impact on parents, is the public. Negotiations are almost always conducted in private, as the law allows.

A sunshine clause encourages public input into negotiations: both parties must publicly present their initial proposals for comment at a publicized school board meeting before negotiations begin. In some districts a "sunshine committee" or public group studies both proposals and offers comments at this meeting. Any new subjects that are raised during negotiations must be made public within 24 hours. The financial impact — cost and funding source — of the settlement must be explained prior to adoption of the final contract by the school board, since it may affect the educational program.

If both parties agree, any phase of negotiations may be conducted publicly, or observers may be invited. In San Francisco, for example, the district PTA president is an observer in all negotiations. Typically, however, the school board and union announce their opening positions — perhaps with lengthy details but more likely in terse statements — and then talk privately. Although any meeting with a majority of school board members must be open to the public, the Rodda Act specifically permits private meetings between the school board and its negotiator to discuss bargaining.

FOR MORE INFORMATION

Although each district has its own style and set of working conditions, each one must report the same financial and demographic information to the California Department of Education. The comparable data is publicly available at the web site developed by the Education Data Partnership (California Department of Education, Fiscal Crisis and Management Assistance Team, Alameda County Office of Education, and EdSource) — www.ed-data.k12.ca.us.

Two other useful contacts are:

CFIER
1325 Howe Avenue #210
Sacramento, CA 95825
Phone 916/567-9911
Fax 916/567-0776

PERB
1031 18th Street
Sacramento, CA 95814
Phone 916/322-3198
Fax 916/327-6377

The setting for collective bargaining is always changing

The world in which public schools operate is always changing, with new reforms, new regulations, new technologies, and many new students. Inevitably this means new issues for collective bargaining.

The basic legislation about collective bargaining has changed little in the past decade. But the subjects for bargaining and the ways in which the process is handled have changed a great deal, due to new laws and ongoing rulings by PERB and sometimes the courts.

The increased attention during the late '90s to improving K-12 education introduces questions that are not easily answered. For example, how does collective bargaining interact with site-based decision making, or new pay structures for teachers, or accountability of teachers and students?

While changes in state law may answer some of these questions, most likely they will also be discussed across the bargaining table. School district and employee unions, in their negotiations, will retain considerable control over how education dollars are spent locally and how effectively even the most ambitious education reforms are implemented. **VE**

Collective Bargaining

Written by:
Penny Howell
Program Consultant

Researched by:
Barbara Miller
Research Director

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4151 Middlefield Rd.
Suite 100
Palo Alto, CA
94303-4743
650/857-9604
Fax 650/857-9618

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